

Opinion

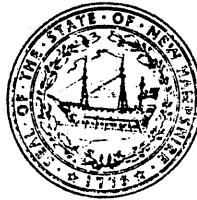
The State of New Hampshire

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DEPUTY ATTORNEY GENERAL
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JAMES C. SARGENT, JR.

Attorney General

Concord

October 15, 1976

Mr. Harry M. Descoteau
Assistant State Treasurer
New Hampshire Retirement System
State House Annex
Concord, New Hampshire 03301

Re: Withdrawal From Retirement System

Dear Mr. Descoteau:

In response to your inquiry of October 15, 1975, we advised you by letter dated December 31, 1975, that in our opinion Assistant City Manager Gerald R. Blake of Concord was not eligible to withdraw from the New Hampshire Retirement System under the provisions either of RSA 100-A:28-a (Supp. 1975) or of RSA 100-A:22 (Supp. 1975). Frankly, we have found the language of the former section perplexing, and some of the language of the latter is far from clear to us. Therefore, we can understand their susceptibility to a variety of interpretations. The purpose of this letter is to amplify the reasoning behind our opinion of December 31, 1975.

RSA 100-A:28-a (Supp. 1975) permits withdrawal from the Retirement System of "any unclassified officer or employee who is a member of any retirement system established under RSA 100, 100-A or 103." It also allows such withdrawal for "any member of the retirement systems established under RSA 100 or 100-A who is not a classified employee." It is our opinion that the former category of persons determined to be eligible to withdraw includes only State officers and State employees. The reasons for this determination are clear. As they are used throughout the statutes relating to retirement, the terms "classified" and "unclassified" refer to the State employment and classification systems. RSA 100-A:1 V (Supp. 1975), for example, defines an "employee" as "any regular classified or unclassified officer or employee of the State". (Emphasis supplied).

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The only exception to this consistent usage of terminology that we can find occurs in RSA 100-A:22 (Supp. 1975), which permits a municipality to exempt its chief administrative officer from compulsory membership in the Retirement System as "an unclassified employee". What the Legislature intended by the phrase "unclassified employee" in this context escapes us. The intended scope of the statute does not. Clearly, it does not extend the privilege of exemption or withdrawal from participation in the System beyond the chief administrative officer of each such municipality. For these reasons, since he is neither a State unclassified officer nor a State unclassified employee, Mr. Blake is not eligible to withdraw from the System under the first category of eligible persons in RSA 100-A:28-a (Supp. 1975).

RSA 100-A:28-a (Supp. 1975) also permits withdrawal from the System by "any member of the retirement systems established under RSA 100 or 100-A who is not a classified employee". There are, it seems to us, three possible interpretations of this language. The first is that it amounts to mere surplusage, and adds nothing to the former category of permissible withdrawals. Not believing the Legislature to have intended such an absurd and misleading redundancy, we reject this first reading. A second interpretation, and a necessary consequence of our opinion that only State employees can be "classified employees", is that this provision would permit withdrawal for any and all participants of the Retirement System who are not classified State employees. We cannot, however, believe such a far-reaching consequence to have been within the contemplation of the Legislature. The widespread withdrawal of untold numbers of members could have a substantial impact on the financial integrity of the Retirement System. It would hardly seem to have been the intent of the Legislature to authorize such action in the absence of a detailed analysis of its fiscal effect. The provisions of RSA 100-A:28-a (Supp. 1975), which were added to House Bill 699 by amendment of the Senate late in the 1975 session [N.H.S. Jour. 628 (1975)], were not presented to either body's finance committee for consideration, and the State Treasurer, as chairman of the Board of Trustees of the New Hampshire Retirement System, was never asked to predict their probable impact. For these reasons, we believe the Legislature intended a reading of RSA 100-A:28-a (Supp. 1975) more restrictive in application than its language could conceivably suggest.

It is our opinion that the latter category of members allowed to withdraw under RSA 100-A:28-a (Supp. 1975) was designed to accommodate only the chief executive officers of a municipality who had been exempted from compulsory membership in or allowed to withdraw from the Retirement System as "unclassified employees" pursuant to RSA 100-A:22 (Supp. 1975). Section 22, which was enacted into law prior to Section 28-a, had permitted such a withdrawal subject to the chief executive's participation in the

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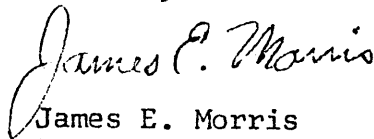
International City Management Retirement Corporation. Consistent with the provisions of Section 22, Section 28-a would then appear to permit withdrawing officers the option of joining the International City Management Retirement Corporation as before or, in the alternative, establishing an individual retirement account. The language "notwithstanding any other provision of law", which prefaces Section 28-a seems directed toward such a result. Not only does this more conservative interpretation of the second category of RSA 100-A:28-a (Supp. 1975) avoid a conflict with other sections of the chapter, it also explains the omission of RSA Ch. 103 from the categories included therein, since municipalities participate in the System only through RSA 100 and 100-A. It does, however, mean that Mr. Blake's position is not among those contemplated by the second membership category of Section 28-a, and he is not eligible to withdraw thereunder.

In a supplemental inquiry, dated January 5, 1976, the Assistant Secretary of the New Hampshire Retirement System, Mr. McCrady, inquired whether employees of the New Hampshire Municipal Association are eligible to withdraw from the System under the provisions of RSA 100-A:28-a (Supp. 1975). For the reasons we have specified above, in our discussion of Mr. Blake's application for a similar withdrawal, it is our opinion that these employees are not so eligible.

Yours sincerely,



David H. Souter
Attorney General



James E. Morris
Assistant Attorney General